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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND,

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Viatical Settlement
Providers and Viatical Settlement
Brokers

CASE NO. INS-2002-00167

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 71 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers," which amend the rules at 14 VAC 5-71-10 through 14 VAC 5-71-100.

The proposed revisions reflect the relocation of the viatical settlement broker licensing section from § 38.2-5702 to § 38.2-1865.1 of the Code of Virginia due to the passage of SB 913 by the General Assembly during its 2001 Session, which is effective September 1, 2002.

In addition, there are proposed revisions to filing dates and references to the Code of Virginia in 14 VAC 5-71-40 C, E, and F, proposed revisions to 14 VAC 5-71-70 A that are unrelated to SB 913, and numerous proposed nonsubstantive and "clean up" revisions to various sections.

The Commission is of the opinion that the proposed revisions submitted by the Bureau of Insurance should be considered for adoption with an effective date of September 1, 2002.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Viatical Settlement Providers and Viatical Settlement Brokers," which amend the rules at 14 VAC 5-71-10 through 14 VAC 5-71-100, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before August 27, 2002, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-00167.

(3) If no written request for a hearing on the proposed revisions is filed on or before August 27, 2002, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the proposed revisions, to all viatical settlement providers and viatical settlement brokers licensed by the Commission, and certain interested parties designated by the Bureau of Insurance.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before July 19, 2002, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

CHAPTER 71.
RULES GOVERNING VIATICAL SETTLEMENT PROVIDERS AND
VIATICAL SETTLEMENT BROKERS.

14 VAC 5-71-10. Purpose.

A. The purpose of this chapter (14 VAC 5-71-~~10 et seq.~~) is to implement the Viatical Settlements Act, Chapter 57 (§ 38.2-5700 et seq.) of Title 38.2 of the Code of Virginia.

B. This chapter is designed to:

1. Regulate persons in the business of offering, advertising, negotiating, contracting for, providing or doing any act in this Commonwealth in furtherance of making or proposing to make a viatical settlement contract;
2. Provide required standards of disclosure;
3. Protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates, which could result if persons transacting the business of viatical settlement providers are allowed to operate an unregulated industry with an aggressive marketing approach targeted to individuals with a catastrophic or life-threatening illness or condition which deals in death benefits derived from insurance;
4. Provide an additional means of securing financial assistance among individuals with a catastrophic or life-threatening illness or condition;
5. Provide formal regulatory controls for the assignment, sale or other transfer of life insurance policies and benefits which, notwithstanding the provisions of § 38.2-301 of the Code

of Virginia, enable an individual with a catastrophic or life-threatening illness or condition to utilize life insurance benefits to obtain funding for life-sustaining treatment, comfort or care; and

6. Recognize that assignment of life insurance benefits without an insurable interest in the life of the person should only be made in good faith and not for monetary speculation, and that such assignment must not promote an interest in the early death of the insured.

C. This chapter is not designed to regulate or monitor the financial solvency of persons in the business of viatical settlements.

D. Sales of fractional interests in a life insurance policy or interests in a pool of such policies shall constitute the sale of a "security," as that term is defined in the Virginia Securities Act, Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia).

14 VAC 5-71-20. Definitions.

The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Commission" means the Virginia State Corporation Commission.

"Viatical settlement" means compensation or other valuable consideration paid to the viator in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of a life insurance policy or certificate to the viatical settlement provider, which compensation or other valuable consideration is less than the expected death benefit of the life insurance policy or certificate.

"Viatical settlement broker" means any person who, for another and for a fee, commission or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical

settlements between a viator and one or more viatical settlement providers; however, "viatical settlement broker" does not include an attorney, accountant or financial planner who is not paid by the viatical settlement provider and who is retained to represent the viator.

"Viatical settlement contract" means a written agreement between a viatical settlement provider and a person who owns a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition; under the terms of the agreement, the viatical settlement provider will pay compensation or other valuable consideration, which is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. "Viatical settlement contracts" do not include accelerated death benefit provisions governed by 14 VAC 5-70, contained in life insurance policies, whether issued with the original policy or as a rider, ~~according to the regulations (14 VAC 5-70-10 et seq.) promulgated by the State Corporation Commission.~~

"Viatical settlement provider" means a person that conducts the business of viatical settlements directly or indirectly as agent or attorney-in-fact for one or more persons entering into or attempting to enter into a viatical settlement contract. "Viatical settlement provider" does not include: (i) any bank, savings bank, savings institution, credit union or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan; (ii) the issuer of a life insurance policy which makes a policy loan on a policy that it has issued, permits surrender of the policy or pays other policy benefits, including accelerated death benefits ~~according to regulations promulgated by the State Corporation Commission~~ governed by 14

VAC 5-70; or (iii) any individual who enters into only one agreement in a calendar year for the transfer of the death benefit or ownership of the insurance policy or certificate for any value less than the expected death benefit.

"Viaticated policy" means a life insurance policy or a certificate of life insurance issued under a group life insurance policy that has been acquired or transferred pursuant to the terms of a viatical settlement contract.

"Viator" means the owner of a life insurance policy or the holder of a certificate issued under a group life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition who enters into an agreement under the terms of which the viatical settlement provider will pay compensation or other valuable consideration, which compensation or other valuable consideration is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. "Viator" does not include a viatical settlement provider or any subsequent owner of a viaticated policy.

14 VAC 5-71-30. License requirements for viatical settlement providers.

A. A viatical settlement provider shall not enter into or solicit a viatical settlement contract without first obtaining a license from the ~~State Corporation Commission~~ commission.

B. The application shall be on a form required by the ~~State Corporation Commission~~ commission.

C. The application shall be accompanied by a fee of \$500. The license may be renewed biennially by submitting a renewal application form and fee of \$500 prior to April 1 of the

renewal year. Failure to submit a renewal application form and fee within the time prescribed shall result in an automatic expiration of the license on June 30 of the renewal year.

D. Only those individuals named in the application may act as viatical settlement providers.

E. The ~~State Corporation Commission~~ commission may ~~ask for~~ require such additional information as is necessary to determine whether the applicant complies with the requirements of § 38.2-5701 of the Code of Virginia.

F. Viatical settlement providers shall acquire and maintain a surety bond in the amount of \$100,000. A copy of the executed bond shall be filed with the ~~State Corporation Commission~~ commission at the time of application for a license and with each renewal.

G. Viatical settlement providers, either directly or through a viatical settlement broker, shall be required to provide a written disclosure form to the viator at the time of solicitation for the viatical settlement and again at the time the viatical settlement contract is signed by all parties. Disclosure forms containing identical or substantially similar wording to the following are deemed to be approved for use in Virginia and need not be filed. Whether a disclosure form contains "substantially similar" wording, as that term is used herein, shall be determined at the sole discretion of the ~~State Corporation Commission~~ commission. Under no circumstances shall a disclosure form be considered to contain wording "substantially similar" unless the form addresses each and every element contained in the form contained herein. Viatical settlement providers wishing to utilize disclosure forms the wording of which differs substantially from that contained herein may not utilize such forms until they have been filed with and approved by the ~~State Corporation Commission~~ commission, either with the initial application for a viatical

settlement provider license or at such later time as the viatical settlement provider may determine that it wishes to utilize a different form.

VIATICAL SETTLEMENT PROVIDER/COMPANY NAME

DISCLOSURE FORM

VIATICATING YOUR LIFE INSURANCE POLICY?

Are you thinking about viaticating your life insurance policy? If you are, your decision could be a good one --or a mistake. You will not know for sure unless you carefully consider all of the options available to you and the consequences of viaticating your life insurance policy.

We are required to inform you of the following:

- Make sure you understand the facts. You should ask your insurance company to review all the possible alternatives that your life insurance policy may offer in lieu of a viatical settlement.
- Compensation from a viatical settlement may be taxable. You should seek assistance from a personal tax advisor.
- The proceeds from a viatical settlement may be subject to the claims of creditors.
- Compensation from a viatical settlement may affect your eligibility for medical assistance or other government benefits or entitlements. You should seek advice from the appropriate government agencies.
- You have the right to rescind your viatical settlement contract within 30 days of the date the agreement was signed by the parties or 15 days of the receipt of the viatical settlement proceeds, whichever occurs first.
- We are required to disclose to you the date by which the viatical settlement funds will be available to you and the source of those funds.

- The viatical settlement broker is presumed to represent this viatical settlement provider, unless you have obtained a prior written agreement to the contrary from the viatical settlement broker. If the viatical settlement broker represents this viatical settlement provider, he cannot seek or obtain any compensation from you.

Review all options and issues before you decide. This way you can be sure you are making a decision that is in your best interest.

_____	_____	_____
Applicant's Signature	Date	Signature of authorized representative of viatical settlement provider

14 VAC 5-71-40. License requirements for viatical settlement brokers.

A. A viatical settlement broker shall not solicit a viatical settlement contract without first obtaining a license from the ~~State Corporation Commission~~ commission.

B. A viatical settlement broker shall ~~make~~ submit an application on a form required by the ~~State Corporation Commission~~ commission.

C. The application shall be accompanied by a fee of \$50. The license may be renewed ~~yearly~~ annually by submitting a renewal form and payment of a fee of \$50 ~~by July 31 on or before June 1~~. Failure to submit a renewal form and fee within the time prescribed shall result in an automatic expiration of the license on ~~August 1~~ June 30.

D. The license shall be a limited license which allows solicitation only of viatical settlements.

E. Prelicensing examination, ~~prelicensing education~~ and continuing education required of ~~other~~ agents in §§ 38.2-1815 through , 38.2-1817, and 38.2-1866 of the Code of Virginia shall

not apply to viatical settlement brokers.

F. The ~~State Corporation Commission~~ commission may ~~ask for~~ require such additional information as is necessary to determine whether the applicant complies with the requirements of ~~§38.2-5702~~ § 38.2-1865.1 of the Code of Virginia.

14 VAC 5-71-50. Other requirements for viatical settlement brokers.

A. In the absence of a written agreement making the viatical settlement broker the viator's agent, viatical settlement brokers shall be presumed to be agents of viatical settlement providers.

B. Viatical settlement brokers shall not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

14 VAC 5-71-60. Standards for evaluation of reasonable payments.

In order to assure that viators receive a reasonable ~~return~~ compensation for viaticating a life insurance policy or certificate, the following shall be minimum face value percentages:

Insured's Life Expectancy	Minimum Percentage of Face Value (at time of viatication and withdrawals) Less Outstanding Loans Received by Viator
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but less than 24 months	60%
Twenty-four months or more	50%

The percentage may be reduced by 5.0% for viaticating a policy written by an insurer rated less than the highest four categories by at least two rating agencies, such as A.M. Best or other comparable rating agencies, based on the most recent publication of such rating agencies at the

time of viatication.

14 VAC 5-71-70. Reporting requirements.

A. On or before March 1 of each calendar year, each viatical settlement provider licensed in this Commonwealth shall file an annual statement of all viatical settlement transactions where the viator is a resident of this Commonwealth, and a separate annual statement of all viatical settlement transactions for all states in the aggregate, on a form prescribed by the ~~State Corporation Commission~~ commission containing the following information for the previous calendar year:

1. For each life insurance policy or certificate viaticated:

- a. Date of the viatical settlement ~~was entered into~~ contract;
- b. Life expectancy of the viator at the time of the contract;
- c. Face amount of the policy at the time ~~it was viaticated~~ of the contract;
- d. Outstanding policy loans (if any);

~~e.~~ e. Amount paid by the viatical settlement provider to the viator to viaticate the policy; and

~~e.~~ f. If the viator has died:

(1) Date of death; and

(2) Total insurance premiums paid by the viatical settlement provider to maintain the policy or certificate in force;

2. Breakdown of applications received, accepted and rejected, by disease category of insured person with a catastrophic or life-threatening illness or condition;

3. Breakdown of policies or certificates viaticated by issuer and policy type;

4. Number of secondary market vs. primary market transactions;
5. Portfolio size; and
6. Amount of outside borrowings.

B. On or before March 1 of each calendar year, each viatical settlement broker licensed in this Commonwealth shall file an annual statement on a form prescribed by the ~~State Corporation Commission~~ commission containing the following information for each life insurance policy or certificate viaticated ~~for~~ during the previous calendar year:

1. Date of the viatical settlement ~~was entered into~~ contract;
2. Life expectancy of the viator at the time of the contract;
3. Face amount of the policy at the time ~~it was viaticated~~ of the contract;
4. Amount paid by the viatical settlement provider to the viator to viaticate the policy;

and

5. Commission paid by the viatical settlement provider to the viatical settlement broker.

14 VAC 5-71-80. Annual notification and modification of application and annual statement forms.

The Bureau of Insurance ~~shall be permitted to~~ may modify the ~~data~~ information requirements of the application and annual statement forms ~~on an annual basis or as needed~~ necessary. Any such modifications shall be provided to all persons described in 14 VAC 5-71-10, in the form of an administrative letter sent by regular mail to ~~the~~ each person's mailing address as shown in the ~~bureau's~~ records of the Bureau of Insurance. Failure by a person to receive such ~~annual~~ notice shall not be cause for exemption or grounds for noncompliance with

the reporting requirements set forth in ~~these rules~~ 14 VAC 5-71-70.

14 VAC 5-71-90. General rules.

A. With respect to policies containing a provision for double or additional indemnity for accidental death, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or, in the absence of a designation, to the estate of the viator.

B. Payment of the proceeds of a viatical settlement pursuant to § 38.2-5705 C of the Code of Virginia shall be by means of wire transfer to the account ~~of~~ designated by the viator or by certified check.

C. Payment of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible.

D. A viatical settlement provider or viatical settlement broker shall not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without dependents.

E. A viatical settlement provider or viatical settlement broker shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's physician, attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

F. Contacts for the purpose of determining the health status of the viator by the viatical

settlement provider or viatical settlement broker after the viatical settlement has occurred shall be limited to once every three months for viators with a life expectancy of more than one year and to no more than one per month for viators with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

G. Viatical settlement providers and viatical settlement brokers shall not solicit investors who could influence the treatment of the illness of the viators whose coverage would be the subject of the investment.

H. Viatical settlement providers and viatical settlement brokers shall adhere to the following advertising standards:

1. Advertising shall be truthful and not misleading by fact or implication.
2. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from ~~acceptance of the offer~~ the date of the contract to receipt of the funds by the viator.
3. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the ~~past~~ immediately preceding six months.

14 VAC 5-71-100. Severability.

If any provision of this chapter (14 VAC 5-71-~~10 et seq.~~) or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.